



# Maryland

## Department of the Environment

Larry Hogan, Governor  
Boyd K. Rutherford, Lt. Governor

Ben Crumbles, Secretary  
Horacio Tablada, Deputy Secretary

October 8, 2020

Ms. Beth E. Bachur  
USACE, Baltimore District  
Regulatory Branch  
2 Hopkins Plaza  
Baltimore, MD 21201  
beth.bachur@usace.army.mil

Mr. Michael D. Yost  
U.S. Army Corps of Engineers  
Regulatory Branch  
Application Section I, Biologist  
1203 College Park Drive  
Suite 103  
Dover, Delaware 19904  
michael.d.yost@usace.army.mil

Re: Proposed Nationwide Permits Reissuance, Coastal Consistency Determination, Coastal Zone Management Act

Dear Ms. Bachur and Mr. Yost:

This is in response to the U.S. Army Corps of Engineers (ACOE), Baltimore and Philadelphia Districts, request for a federal consistency concurrence determination pursuant to Section 307(c)(3)(A) of the Federal Coastal Zone Management Act of 1972, as amended, (CZMA) for the reissuance of the Nationwide Permits, including five newly proposed Nationwide Permits, A. Seaweed Mariculture Activities, B. Finfish Mariculture Activities, C. Electric Utility Line and Telecommunications Activities, D. Utility Line Activities for Water and Other Substances and E. Water Reclamation and Reuse Facilities. Your requests were submitted to the Maryland Department of Environment (MDE) on September 25, 2020 from the Philadelphia District and September 30, 2020 from the Baltimore District and each included a ninety (90) day decision deadline. MDE requires additional time to review the proposed activities in accordance with Maryland's Enforceable Policies approved under Maryland's Coastal Zone Management Program (CZMP).

In order to complete the relevant review in accordance with State regulation, MDE requests an extension until January 29, 2021, to make its final decision for each District's request for the reasons that are outlined in this letter. As you are aware, the ACOE will also be required to request a Maryland Water Quality Certification (WQC) in accordance with Section 401 of the Clean Water Act for the Nationwide Permits, which at this time, has not been requested, although imminently anticipated. It would be beneficial to the State and to the ACOE for Maryland to synchronize its review of the proposed Nationwide Permits and be able to issue a decision on both WQC and CZMA requirements within the same timeframe. At a minimum, the proposed timeframe will allow for proper review and administrative procedures to be met at the state and federal levels,

as well as bring both the Philadelphia District and Baltimore Districts to a single CZMA consistency determination date. Furthermore, as you will see set forth below, Maryland requires missing information be submitted in support of the ACOE consistency determination before it can continue its review. MDE values the issuance of the Nationwide Permits for qualifying projects in Maryland and will make its best effort to make the relevant decision as soon as practicable prior to January 29, 2021. Maryland must review the Nationwide Permits as proposed, regardless of any regionally proposed conditions and proposed suspensions in Maryland. We believe that this extension request is reasonable and justifiable in accordance with 15 C.F.R. Section 930.41(b) to make a coastal zone consistency determination.

Maryland finds the ACOE Baltimore and Philadelphia District consistency determination insufficient and missing information to support the consistency determination with Maryland's Enforceable Policies in several key Policy areas. Maryland is particularly concerned how consistency will be maintained for Nationwide Permits where Pre-Construction Notification (PCN) is not required, as well as cumulative effects of multiple Nationwide Permits for a single project. Maryland's Enforceable Policies can be found at the following link for reference: <https://dnr.maryland.gov/ccs/Pages/coastalpolicies.aspx> and have also been attached.

Maryland requires further information be submitted in support of the consistency determinations submitted by the ACOE on September 25 and 30, 2020 specific to the following Maryland Enforceable Policies for the identified Nationwide Permits:

1) General Policies, Core Policies 7, 8 & 14

- a) Core Policy 7: Nationwide Permits 12, 14, 17, 52
- b) Core Policy 8: Nationwide Permits 4, 8, 12, 13, 14, 48, A, B
- c) Core Policy 14: Nationwide Permits 4, 8, 10, 12, 20, 22, 48, A, B

2) General Policies, Water Quality 2, 6, 8 & 10

- a) Water Quality Policy 2: Nationwide Permits 12, 14, 29, 34, 39, 40, 42, 43, 44, 48, 51, 52, 53, A, B, C, D
- b) Water Quality Policy 6: Nationwide Permits 12, 13, 14, 27, 29, 39, 40, 43, 44, 51, 52, C, D
- c) Water Quality Policy 8: Nationwide Permits 14, 29, 39, 43, 44
- d) Water Quality Policy 10: Nationwide Permits 8, 14, 48, 52, A, B

3) General Policies, Flood Hazard 1, 2 & 3

- a) Flood Hazard Policy 1: Nationwide Permits 12, 14, 17, 27, 29, 39, 42, 43, 51, 52, 53
- b) Flood Hazard Policy 2: Same as (a)
- c) Flood Policy 3: Same as (a)

4) Coastal Resources, The Chesapeake and Atlantic Coastal Bays Critical Area, 1, 2, 5, 5, 6, 8, 9, 10, 11, 12, 14, 15, 17, 19, 20, 21, 24, 25, 27, 29, 30 & 31

Nationwide Permits: All Nationwide Permits excluding 1, 2, 5, 6, 7, 9, 10, 11, 13, 15, 16, 18, 21, 24, 25, 28, 33, 35, 36, 41, 45, 46, 49, 50, E

**5) Coastal Resources, Tidal Wetlands, 1**

Nationwide Permits: 3, 4, 12, 14, 17, 22, 23, 27, 29, 38, 48, 52, 53, A, B, C

**6) Coastal Resources, Nontidal Wetlands, 1 (including mitigation measures)**

Nationwide Permits: 12, 14, 20, 21, 23, 27, 29, 30, 31, 32, 34, 37, 38, 39, 40, 42, 43, 44, 48, 50, 51, 52, C, D

**7) Coastal Resources, Forests, 1 & 4**

Nationwide Permits: 12, 14, 20, 21, 23, 27, 29, 30, 31, 32, 34, 37, 38, 39, 40, 42, 43, 44, 48, 50, 51, 52, C, D

**8) Coastal Resources, Historical and Archaeological Site, 1, 2 & 3**

Nationwide Permits: All excluding 1, 2, 5, 6, 9, 10, 11, 13, 15, 16, 18, 28, 33, 35, 36, 45, 46

**9) Coastal Resources, Living Aquatic Resources ,3, 4, 6, 7, 8, 11 & 12**

Nationwide Permits: All excluding 1, 2, 5, 6, 7, 9, 10, 11, 13, 15, 16, 18, 28, 33, 35, 36, 45, 46

**10) Coastal Uses, Mineral Extraction, 2, 3 12 & 29**

Nationwide Permits: 14, 43, 44

**11) Coastal Uses, Electrical Generation and Transmission, 1, 2, 3, 4 & 5**

Nationwide Permits: 14, 17, C, E

**12) Coastal Uses, Tidal Shore Erosion Control, 3, 5, 6 & 7**

Nationwide Permits: 3, 13, 54

**13) Coastal Uses, Oil and Natural Gas Facilities, 2, 3 & 4**

Nationwide Permits: 8, 12, 14, 20

**14) Coastal Uses, Dredging and Disposal of Material 1, 2, 8, 11, 12 & 13**

Nationwide Permits: 16, 19, 23

**15) Coastal Uses, Navigation, 1, 2, 3 & 5**

Nationwide Permit: 22

**16) Coastal Uses, Transportation, 5**

Nationwide Permit: 14

**17) Coastal Uses, Agriculture 1, 3 & 5**

Nationwide Permits: 34, 40, 41

**18) Coastal Uses, Development, 2, 3, 4, 5, 7, 9, 10, 11 & 12**

Nationwide Permits: 12, 14, 17, 19, 29, 32, 39, 41, 43, 47, 48, 51, 52, A-E

**19) Coastal Uses, Sewage Treatment, 22 & 23**

Nationwide Permits: 29, 39, 40, D

In consideration of Items 1-19 above, please provide further information and justification how the relevant Nationwide Permits are consistent with the relevant enforceable policies as identified above within the next thirty (30) days. Once Maryland receives the missing information, Maryland will continue its review.

Again, for the reasons set forth above MDE requests an extension until January 29, 2021 to make a final decision regarding your CZMA consistency determination. Please confirm acceptance of the extension request within the next ten (10) days.

Please contact me if you have any questions or need additional information regarding Maryland's Coastal Zone Management Program. I can be reached at 410-537-3528 or by email at [hnelson@maryland.gov](mailto:hnelson@maryland.gov).

Sincerely,



Heather L. Nelson, Acting Manager  
Wetlands and Waterways Program  
Water and Science Administration

Attachment

cc: Dan Swenson, Chief, Regulatory Branch, ACOE, Baltimore District (electronic)  
Todd Schaible, Chief, Regulatory Branch, ACOE, Philadelphia District (electronic)  
Joseph Abe, DNR (electronic)